

<https://helda.helsinki.fi>

Roman Law. An Introduction

Tuori, Kaius

2019-04

Tuori , K 2019 , ' Roman Law. An Introduction ' , The Classical Review , vol. 69 , no. 1 , pp. 217-218 . <https://doi.org/10.1017/S0009840X18002688>

<http://hdl.handle.net/10138/327397>

<https://doi.org/10.1017/S0009840X18002688>

cc_by_nc_nd

acceptedVersion

Downloaded from Helda, University of Helsinki institutional repository.

This is an electronic reprint of the original article.

This reprint may differ from the original in pagination and typographic detail.

Please cite the original version.

Domingo (R.) *Roman Law. An Introduction*. Pp. xiv + 238. London and New York: Routledge, 2018. Paper, £29.99 (Cased, £110). ISBN: 978-0-8153-6277-7 (978-0-8153-6275-3 hbk).

Writing introductory volumes is a difficult task, requiring the skill to condense the essential from an essentially limitless mass of material and to present it in a way that a student could understand. At the same time, one should aim to make the substance rich and entrancing, making the students want to know more and to immerse themselves in the subject matter.

In his new textbook on Roman law, Rafael Domingo has set out to make “an accessible introduction to Roman law students of any legal tradition.” (p. viii) This innocent-sounding statement reveals one of the major challenges he is facing: what is Roman law, actually? Since the first textbook of Roman law that has been preserved to us, the mid-second century CE *Institutes* of Gaius, Roman law has been usually taught as the law of the land, introductory texts being aimed for first year law students. For roughly two millennia, this idea of Roman law as the foundation of contemporary law persisted, but as national legal systems have been distancing themselves from the Roman foundation, the need for a specifically Roman introduction has diminished. As a result, the introductory books to Roman law have become more and more nationalized, seeking to present links to each national legal tradition, pointing out where Roman law rules were incorporated in legislation and in the jurisdiction of supreme courts.

At present, the market for English-language introductory volumes has been largely held by Paul Du Plessis, whose *Borkowski's Textbook on Roman Law* (editions 2015, 2010 and 2005) and *Studying Roman Law* (2012) have catered to both British law students and students of classics and ancient history, but also older textbooks by Nicholas and others have been used in the law curriculum. In contrast, Continental textbooks such as Laurent Waelkens's '*Amne Adverso*'. *Roman Legal Heritage in European Legal Culture* (2015) has a more profound emphasis on the later influence of Roman law in the European legal tradition. On a different note, writing more to ancient historians and classicists, Andrew M. Riggsby's *Roman Law and the Legal World of the Romans* (2010) explores the position of law in the ancient world and the everyday life of Romans. For the teaching of Roman law, in terms of volume the main countries are of course Germany and Italy, where classics like Kaser are used with innumerable newer volumes.

How does Domingo then live up with his claim of serving all students from all traditions equally? The book, as many textbooks do, emerges from a long career

teaching Roman law in Spain and the US. It does not presume much in the form of preliminary knowledge nor does it demand a working knowledge of Latin or Greek. The book is divided into two parts, the first on Roman law in its historical context, the second on Roman law in action, meaning the substance of law. The first part outlines the Roman ideas of law, the significance of Roman law in history, the emergence of Roman law in the Roman state, the legal profession and legal literature and so forth. Justinian and the compilers are described, as is the subsequent impact of Roman law in European history. In the second part, the substance of law, is divided into procedural law, family law, the laws of property, succession and obligations. Typically of the peculiar structure of Roman law, criminal law is absent per se, but the second part of the law of obligations is devoted to delicts, private wrongs that were the legal responses to many offences that would in modern systems fall under criminal law. This division is fairly traditional, but works in the pedagogical sense. There are direct references to Roman sources in the text, which is very good, and each chapter comes with a bibliography of works in English, with some of the major works in other languages mentioned as well. This is a workable solution to the issue that most of the contemporary works in Roman law are either in German or Italian.

In practice, the division means that the book has one part which is historical and one part which is dogmatic. The historical part is a lucid and very informed outline of the two and half millennia history of Roman law from the ancient Romans to the present, presenting both constitutional developments and the beginnings of jurisprudence. For a student, this is quite helpful, but the tendency to bring name after name of significant scholars may prove to be exhausting. In the dogmatic part, there is a strategy of briefly outlining the topic, such as property and then go through the different legal institutions in turn. While there have been a extensive debate in the recent years about whether to teach the law in books or the law in action, the author in this case is clearly outlining the ancient Roman doctrine despite the title promising the law in action. This is perhaps the part where one needs the stubborn tenacity of the law student. Subtitles such as "Interdictal protection of possession" or "*Emphyteusis* and *superficies*" demonstrate that one is in deep legal territory, but luckily for the student, these are all explained. The downside of the very condensed nature of the book is that there is very little space to explain the connections between the institutes and how they formed a whole. What is even more an issue is that while the soul of Roman law, at least to this reader, are the cases and the working of legal issues to find solutions, the present volume dispenses with only a few exceptions. This is understandable due to the constraints of space, but a shame for the reader and the student.

Finally, there is the issue of readership. The book is a solid and informed introduction to Roman law as it is now read and taught. In the historical and

dogmatic sections, there were some odd choices and some raised eyebrows here and there and I would gather that colleagues from different traditions of Roman law might find different things objectionable, but the bigger question is to whom is this a book for?

The field of Roman law is currently undergoing a rapid transformation. Law schools in Europe have, as part of their turn towards pure contemporary law, abolished chairs in Roman law. On the other hand, there has been a resurgence in the interest in the role of law in the ancient world in the fields of classics and history. From these audiences, it is quite clear that it is aimed for the law market, seeking the intellectual connections and concepts from there.

All in all, this is a well-written work that condenses an immense amount of material readably to the law student audience. Like many textbooks, it is very traditional in its outlook and content, not making any bold moves either in framing the subject matter or discussing it (though at p. x, the author does mention issues like slavery and misogyny). For an English-language introductory course on Roman law, this is a good book to assign for students, and it is clear enough for use as an exam book or as a first introduction to Roman law.

KAIUS TUORI
University of Helsinki